

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

MOR0334P00891US

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on _____

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Application Number

10/695,404

October 28, 2003

First Named Inventor

William L. Grilliot et al

Art Unit

3765

Examiner

Alissa L. Hoey

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96) attorney or agent of record.
Registration number 37,825

Signature



Jeffery N. Fairchild

Typed or printed name

312/876-1800

Telephone number

 attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

March 26, 2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

*Total of 2 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

STATEMENT FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Claims 1-8 are pending and at issue.

Claims 1, 2, 5 and 6 stand rejected as anticipated by Campbell (US 4,601,066), and claims 3, 4, 7 and 8 stand rejected as unpatentable over Campbell in view of Eastbay Lined Windpants (catalog page 19).

The clear error in the rejections is that the rejections are based on a factual error by the Examiner.

More specifically, the claims are directed towards a protective pair of pants and claim 1 recites a lower region for each of the leg portions of the pants wherein the lower region has "a puncture-resistant layer made from a cloth fabric that is puncture-resistant", the cloth fabric being "resistant to punctures by snakes or by thorny or spiky plants", and, an upper region of each leg portion having "an outer layer of abrasion resistant material, the abrasion-resistant material being less resistant to punctures than the puncture-resistant cloth fabric". This structure is neither shown nor suggested in Campbell or Eastbay. The shortcomings of the references was pointed out to the Examiner in Applicants' Amendment "B" filed November 24, 2008, and in response, at page 5 of the final Office Action, the Examiner makes the unsupported assertion that "the bindings of Campbell (55) would be more resistant to puncture than the material of the remainder of the tights garment." However, there is absolutely nothing in Campbell or in any of the other references to support this assertion, and the

Examiner has pointed to nothing to support this assertion. Nowhere in Campbell's disclosure is it shown, or even suggested, that the "soft material" of the bindings (55) are made of any different material than the remainder of the legs (48a) and (48b) of the disclosed tights (12), let alone that the material or cloth fabric of the bindings (55) "would be more resistant to punctures than the material of the remainder of the tights garment" as asserted by the Examiner at page 5 of the final Office Action. Accordingly, the rejection of claim 1 and its dependent claims 2-4 is based on a factual error and should be withdrawn.

Similar to claim 1, independent claim 5 recites "the material of the outer layers of the lower regions has a greater resistance to punctures than the material of the outer layers of the upper regions." Again, to overcome the failings of the references, the Examiner relies on the same unsupported assertion as used in rejecting claim 1.¹ Accordingly, for the same reasons discussed above in connection with claim 1, the rejection of claim 5 and its dependent claims 6-8 is based on a factual error and should be withdrawn.

¹ It should be noted that in the §103 rejection relying on Eastbay Lined Windpants, the Examiner makes a similar assertion that the lower region of each leg portion of the Eastbay Windpants "has the layer of puncture-resistant material (see description and picture of Eastbay Lined Windpants: page 19)". However, there is absolutely nothing in the description or picture to support this assertion, nor is there anything in the Eastbay reference that shows or suggests the recitations discussed above in connection with claims 1 and 5.